

**UNIVERSITY OF THE PACIFIC  
McGEORGE SCHOOL OF LAW**

**EVIDENCE/TRIAL ADVOCACY INTEGRATION  
FALL SEMESTER, 2009  
MID-TERM EXAMINATION**

**PROFESSOR GALVES  
DECEMBER 16, 2009  
6:00 P.M. - 9:00 P.M.**

**SPECIAL EXAM INSTRUCTIONS**

In addition to the standard McGeorge exam instructions, please READ THE SPECIAL EXAM INSTRUCTIONS BELOW CAREFULLY!

1. If you are writing your exam, please write your student exam number on the cover of your exam booklets. If you are typing, please make sure your exam number appears on your essay cover sheet.
2. Answer according to the applicable Federal Rules of Evidence and/or applicable case law.
3. YOU MUST RETURN ONLY YOUR EXAM BOOKLETS OR LAPTOP ANSWERS, you may keep the exam itself.
4. READING PERIOD: 6:00-6:30 P.M. – You have an extra ½ hour at the beginning of the exam, to read the exam and organize/outline your answer/analysis. You will not be allowed to write your exam answers until the one-half-hour reading period has passed. During the reading period (6:00 p.m. - 6:30 p.m.) you will be provided with the exam questions and three pieces of scratch paper on which you may write.
5. There are two (2) related essay questions (the weight of each is roughly commensurate with the time allotted):
  - Q1: 6:30 p.m. - 8:00 p.m. (A trial transcript, with 15 numbered sentences where you are to provide the applicable objections/motions to strike, analysis, strategy and likely rulings)
  - Q2: 8:00 p.m. - 9:00 p.m. (The results of that trial situation, where you are to provide the applicable bases for appeal, analysis, and likely rulings)

6. This a closed-book, closed-note exam, you will NOT be given a copy of the Federal Rules of Evidence for reference. (You will be able to use any and all materials on the Final Exam only). You may not consult any materials whatsoever on this exam except what you outline on the 3 pieces of scratch paper given to you during the reading period.
7. This Mid-Term Exam is worth 30% of your final grade.
8. Please be sure to keep your own time and budget your time so you have enough time to answer each portion of each question.

To the extent you use case names, the Federal Rules of Evidence, make sure you explain how they are applicable and why they might be controlling. **YOU NEED NOT PROVIDE RULE NUMBERS, OR CASE NAMES**, if you are more comfortable discussing evidentiary concepts contained in the various rules, and in case law.

Cover all reasonable arguments and state your reasoning as fully as possible within the time limit given. Note that implausible arguments or recognition of non-issues will NOT receive credit. Be sure to make necessary interrelationships between the rules, law, and facts. Be sure to consider strategic courtroom concerns, such as whether it would be a good idea not to object even if a party could otherwise do so under the rules, to the extent such concerns are significant and ought to be considered by an advocate.

The questions generally will be weighted based on the time suggested. But again, spend as much time as you deem necessary to answer the questions appropriately. Out of the 110 possible raw points, they breakdown as follows:

Reading Period (30 min.)	N/A
Essay One (15 possible objections) (90 min.)	= 65 pts.
Essay Two (2 sub-questions: "A" & "B") (60 min.)	= 35 pts.
Overall Clarity, Organization, and Persuasiveness of Answers	= 10 pts.

**CLARITY OF EXPRESSION, CONCISENESS AND EFFICIENT ORGANIZATION OF YOUR EXAM ANSWERS ALL CONTRIBUTE TOWARD A GOOD SCORE. THEIR OPPOSITES DETRACT. GOOD LUCK.**

THE TWO QUESTIONS FOR THIS MID-TERM EXAM ARE BASED ON THE FOLLOWING FACTS:

Dave owns a red sports car. He took it to a repair shop in order to get an oil change. The mechanic informed Dave that, during the oil change, the mechanic noticed that the brakes were faulty. The brakes, however, were not repaired. Later that day, Dave was involved in an accident. He allegedly ran a red light and hit a truck, injuring the driver of the truck, Polly. He also assaulted Polly after the accident.

Dave was arrested and charged with: (1) Driving Under the Influence of alcohol (“DUI”); (2) Vehicular and physical assault of Polly; and, (3) Running a red light. Dave is being prosecuted in federal court (assume federal jurisdiction).

Polly has also filed a federal lawsuit against Dave and the repair shop (assume federal jurisdiction) for personal injuries and for property damage to her truck. Various witnesses will be called at both trials.

Assume the Federal Rules of Evidence apply in both actions.

QUESTION I INVOLVES THE TWO CASES AT THE TRIAL LEVEL.

QUESTION II INVOLVES THE TWO CASES ON THE APPELLATE LEVEL.

FOR QUESTION I: Assume that the criminal prosecution is the “First Trial,” and the civil lawsuit is the “Second Trial.”

For each of the numbered indicated points below in the left margin – “[1]” - “[15]” – state what proper, plausible objection(s), or motion(s) to strike, if any, could have been made, and explain how and why the trial court should rule on them, or, if there is no proper, plausible objection/motion that could be made, simply indicate, “N/A,” then state very briefly why the question or answer given was proper/non-objectionable. Be sure to include any strategic reason(s), if any exist, for not making possible objection(s) to the numbered items, even if they are permissible under the rules. Do not include: (1) any implausible objections/motions in your answers or (2) any objections/motions that could be made to any questions or answers that are not numbered, unless they clearly relate to a numbered point.

FOR QUESTION II: Assume that both trials have concluded and the criminal prosecution is the “First Appeal” (Essay “A.”). Assume that the civil lawsuit is the “Second Appeal” (Essay “B”). For both questions (Essay “A” and “B”), you will be told to assume certain testimony and/or evidence was either admitted or excluded. You will then be asked to discuss whether the trial courts’ various rulings on that evidence should be affirmed or reversed on appeal.

CRIMINAL PROSECUTION OF DAVE FOR: (1) DUI; (2) VEHICULAR AND PHYSICAL ASSAULT; AND, (3) RUNNING A RED LIGHT– First Trial

[Prosecution’s Direct Examination of the Mechanic who serviced Dave’s car]

[Witness is sworn in; explains background and work on Dave’s sports car...]

- Q. Please describe Dave’s car, the car that you and your helper worked on.  
A. [1] OK, it was a fast red sports car with racing stripes, you know, the kind of car that people who like to speed, or race, drive.
- Q. When you were changing the oil in Dave’s car, did you notice anything about the car’s condition?  
A. [2] Yes, in fact, I told my helper that Dave had better get the brakes fixed because they looked bad to me.
- Q. Now, did Dave know that he had faulty brakes?  
A. [3] Yes, later when Dave picked up his car, I told him that I noticed that his brakes were faulty and that he had better get them fixed.
- Q. How did Dave respond to that?  
A. [4] Uh, he just said, something like, “so the brakes need repair; well, they have felt a little funny lately.”

[The Prosecution then calls the helper to the stand]

- Q. After you helped change the oil in Dave’s car, what did you do later that day?  
A. [5] A few hours later, I was walking down Main Street. I heard this auto collision behind me and then I heard some guy say, “Hey, that red sports car just ran a red light and hit that truck! Whoa, that dude driving the sports car must be drunk or something.”
- Q. Then what happened?  
A. [6] The woman who got hit, the one driving the truck, got out of her truck and said to Dave, “You drunk idiot, you ran that red light, and hit me. Look what you did to my truck.”
- Q. What did Dave say?  
A. [7] Dave said nothing. He just walked over to take a look at Polly’s truck, and then said, “Oh no, bummer!!!” “OK, I’ll pay for your injuries and everything. So are we good”?
- Q. Did you hear anything else?  
A. [8] Yeah, the witness, the guy who saw everything, then said, “Look inside this dude’s red sports car, there is a bottle of unopened vodka on the seat and there is no registration or insurance in the glove compartment, only a bunch of porn videos, and beer ads, what a loser.”
- Q. What happened after that?

- A. [9] The police arrived and began questioning Dave. Dave told the police officer that he would admit to driving his car too fast and to running the red light, but only if the officer would not give him a ticket for a DUI.
- Q. What else did Dave say?
- A. [10] Dave told the officer, "I may have a drug problem, but I am not a drunk, I am a good guy. I go to church, I treat animals with love and kindness, I am patriotic, and all my habits are good ones."
- Q. Did you see or hear anything else?
- A. [11] Yeah it was kind of funny, but also sad. Dave's wife showed up to the scene and said, "Why do you always do stuff like this, Dave? Last week you were drunk again, trying to mow the lawn. You're pathetic, Dave."
- Q. What did Dave do?
- A. [12] Dave began crying, and then he pushed Polly down to the ground and tried to kick her. He was then immediately arrested.

[Defense calls Dave]

- Q. Do you know Polly?
- A. [13] Yes, I have heard that she is a very dangerous driver and in my opinion she probably ran the red light. She is violent too, she threw the first punch at me so I had to push her down, in order to protect myself.

CIVIL SUIT BY POLLY AGAINST DAVE AND THE REPAIR SHOP; DAVE AND THE REPAIR SHOP MADE NO COUNTERCLAIMS AGAINST POLLY.

[Direct Examination of the Mechanic's helper by Polly's Attorney]

- Q. What did the Mechanic say to you about what would happen if the repair shop did not fix the faulty brakes?
- A. [14] The Mechanic told me, "If we don't get these brakes fixed, then we'll be at fault too for letting Dave leave here and drive with faulty brakes."
- Q. Did you also see that the brakes were faulty?
- A. [15] No, the mechanic just told me to write something on the work order, I don't remember exactly what I wrote, but, let's see, it says here on the work order: "Inspected brakes – repair?"

QUESTION II: (ONE HOUR, 8:00 p.m. - 9:00 p.m.)

Assume that Dave is found guilty of DUI, assault, and running the red light in the criminal trial and that Dave and the Repair Shop are found civilly liable to Polly for damages to compensate her for her personal injuries and property damages. Dave has appealed his convictions and Dave and the Repair Shop have also appealed the civil decision against them.

Assume the following occurred at Dave's FIRST CRIMINAL TRIAL:

- Dave was not allowed to have a witness testify that Polly is a drunk, violent person.
  - The prosecution was allowed to put on evidence that Dave was in the habit of not paying attention when he drives.
  - The prosecution was allowed to ask Dave's witness, who had testified that Dave was a "good guy," if that witness was aware that Dave had been accused in the past of raping a woman and physically beating her.
  - The prosecution was allowed to introduce good character evidence of Polly being peaceful after Dave had put on evidence showing that Polly was the first one to strike Dave after they got out of their vehicles.
  - Dave's offer to stipulate that his sports car was red with racing stripes was denied and a photo of his sports car at a drag strip was allowed in order to identify the car.
- A. Assume Dave made a proper objection (if one existed) to each of these separate issues during trial. Discuss all of the bases upon which Dave could appeal his criminal convictions and discuss whether any of his bases for appeal would be successful.

Assume that Polly was allowed to use the following pieces of evidence at the SECOND CIVIL TRIAL:

- Polly was allowed to put on evidence that the Mechanic was a convicted drug addict and had bad character for lying.
- Polly was allowed to testify that Dave sexually groped her as he pushed her down and was able to put on a witness that stated Dave had groped her when they worked together 12 years ago.
- Polly was allowed to introduce evidence that Dave did not check the brakes on his car even after he was told to do so by the mechanic, but he later fixed the brakes after the accident so that his insurance premiums would not go up.
- Polly was allowed to testify that Dave had two other DUI charges against him this year, and that in both of those cases, there was evidence that Dave smoked pot and crack while he was driving.
- After Dave put on evidence of Polly having a bad reputation for driving recklessly, Polly put on evidence of Dave having a bad reputation for drunk driving.

B. Assume Dave and/or the Repair Shop made a proper objection (if one existed) to all of these incidents. State all of the bases upon which Dave and/or the Repair Shop could appeal the liability determination against them and state whether any of their bases for appeal would be successful.